JUDGMENT—ENJOINING EXECUTION ON DORMANT JUDGMENT.—Plaintiffs herein were defendants in a suit instituted by one H. to foreclose a mortgage; H. obtained judgment, but the sale of the mortgaged property failed to satisfy the debt in toto. Subsequently by the death of H., the judgment in the foreclosure proceeding became dormant, but an execution was sued out on that judgment. Plaintiff now seeks to enjoin the execution. *Held,* that an execution issued upon a dormant judgment is void and may be enjoined. *Updegraff et al.* v. *Lucas, sheriff et al.* (1907), — Kan. —, 93 Pac. Rep. 630.

At common law a plaintiff who obtained a judgment in a personal action was compelled to attempt to execute it within a year and a day, but by the statute of Westminster II, scire facias was given to revive the judgment. Unless the judgment was revived execution could not issue. In many states after the time of the statute has run, execution can issue only by an order of court granted on proof that the judgment remains unsatisfied. FREEMAN, EXECUTIONS (3rd ed.), §§ 27, 27a. While it is true that an execution on a dormant judgment is subject to attack in some manner, still the courts differ as to the method which should be pursued. Thus it has been held that the remedy is by motion in the original cause and not by injunction. *Mayo* v. *Bryte,* 47 Cal. 626; *Walker* v. *Gurley,* 83 N. C. 429. On the other hand it has been held that an injunction is the proper remedy. *Krinke* v. *Parish,* 9 Ohio Cir. Ct. 141 (citing *Miller* v. *Longacre,* 26 Oh. St. 291); *North* v. *Swing,* 24 Tex. 193; *Seymour* v. *Hill,* 67 Tex. 385, 3 S. W. 313; *Gabel* v. *McMahan,* 1 Tex. App. Civ. Cas. 716. In *Seymour* v. *Hill* (supra), it was said that the reason the injunction would issue is that when the judgment becomes dormant, it is presumed that it is satisfied, but that this presumption is rebuttable by proof that it has not in fact been paid, and when such proof is produced, the injunction will be dissolved. In California it is held that the special circumstances of the individual case control. *Imlay* v. *Carpentier,* 14 Cal. 173; *City and County of San Francisco* v. *Pixley,* 21 Cal. 56.

MASTER AND SERVANT—LIABILITY OF MASTER TO SERVANT FOR INJURY DUE TO DEFECTIVE MACHINERY—CONSTRUCTIVE NOTICE OF DEFECTS.—Plaintiff was employed at a machine for cutting tissue paper, in which knives descended when a lever was pressed. When the machine was working properly it was impossible for the knives to descend more than once as a result of a single pressing of the lever. After one operation of the knives, plaintiff reached under to remove the cut paper and the knives descended without his having pressed the lever a second time, and he was injured. There was evidence that it was impossible to discover any defect by inspection. Further evidence showed that several times before this the machine had acted in a similar manner and this fact was well known among the workmen. *Held,* that such a reputation for defective operation was sufficient to charge defendant with notice of the dangerous condition of the machine. *Fleming* v. *Northern Tissue Paper Mill* (1908), — Wis. —, 114 N. W. Rep. 841.

In holding that several instances of defective operation of a piece of machinery, extending over a considerable period of time, may create among the workmen such a reputation for defective operation as will charge a defendant

employer with notice of such operation, the court has gone farther than any previous case. There are many cases which at first glance seem to be in point, but upon examination they will be found to be cases in which the defects could have been discovered by inspection. In such cases there seems little question but that the defendant will be held liable when he either knew of the defects or could have discovered them. Here is the interesting and important feature of this case. The defect was not one that could be discovered and the court lays down the rule that although such defects could not have been ascertained, the fact that the machine's defective operation was generally known among the employees is sufficient to charge the defendant with knowledge of such defective operation and to render it liable for negligence in not warning a workman of such danger. While this is an extension of the doctrine of constructive notice with regard to machinery, upon the principles of evidence and by analogy it can be upheld. "The reputation of the place or machine and the fact that its dangerousness or the existence of the defect was reputed or generally talked about, would be relevant as showing the probable carrying of information by some one to the person charged; usually the question is one of constructive notice not an evidential one." WIGMORE, EVIDENCE, § 252. The case is analogous to those in which general reputation of a servant for incompetency, carelessness, etc., has been held to be constructive notice to an employer. *Cameron* v. *N. Y. C. & H. R. R. Co.*, 145 N. Y. 400, 40 N. E. 1; *Lambert* v. *Pfizer*, 49 App. Div. 82, 63 N. Y. Supp. 591; *Calumet Electric St. Ry. Co.* v. *Peters*, 88 Ill. App. 112; *Texas & P. Ry. Co.* v. *Johnson*, 35 S. W. 1042; *Monahan* v. *City of Worcester*, 150 Mass. 439, 23 N. E. 228. There is no reason why a machine cannot acquire a reputation as well as a person. The reason for extending the rule in the case of servants has seemed to be that it was impossible to ascertain from the physical characterisitics of a man what his competency was, while in the case of a machine defects of operation can usually be found out by inspection. Where, however, it becomes impossible to ascertain such defect by inspection, there is no reason why the same rule should not apply as does in the case of servants.

MASTER AND SERVANT—RAILWAY TRAIN MEN—FELLOW-SERVANTS—COMMON EMPLOYMENT.—Appellee, who was a brakeman on one of appellant's freight trains, while riding on the engine, was seriously injured in a head-on collision between the engine in which he was riding and one of appellant's work-trains. The work-train was on the main track on the time of the freight-train, and although the engineer of the work-train testified that he directed a brakeman to flag the freight and supposed he had done so, it developed that he had not, and the freight running at a high rate of speed, had no notice that the work-train was on the track until the engine was within a few feet of it, and when it was too late to stop or reduce the speed or avoid a collision. *Held*, that the engineer, conductor, and brakeman of the work-train were not fellow-servants of the brakeman of the freight-train and that the latter could recover from the company for his injury resulting from the negligence of the trainmen of the work-train. *Louisville & N. R. Co.* v. *Brown* (1908), — Ct. App. Ky. —, 106 S. W. Rep. 795.